IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 4490 OF 2006
IN
SUIT NO. 2736 OF 2006

M/s.Housing Development Finance Corporation Ltd., .. Plaintiff.

V/s.

Mr.Nair Ramnathan Krishnan & Ors. .. Defendants.

Ms.Nipa Singh i/by M/s. Mahesh Menon & Co. for the Plaintiff.

Ms. Ratna Jaiswal i/by M/s.Law Loyals for Defendant No.2.

CORAM : S. A. BOBDE, J.

DATED : 23rd JANUARY, 2007.

P.C.:

. The learned counsel for the Plaintiff has tendered an affidavit of service, which discloses that the Defendant Nos. 1,2A,3A & 3B are served, but the attempts to serve the defendants Nos. 2B and 4 are failed because the packets were returned with an endorsement that the person was not there at the delivery time. The counsel for the plaintiff, however, submits that the defendants had been served in the earlier Notice of Motion No. 3635 of 2006 but they did not appear at that stage also.

2. Ms.Ratna Jaiswal, the Advocate, appears on behalf of the defendant No.2 and submits that the defendant No.2 is served and that he does not oppose this notice of motion. She, however, submits that in the earlier Notice of Motion No. 3635 of 2006 the defendant No.2 was not served and the other defendants were served.

3. In the earlier motion, being Notice of Motion No.3635 of 2006; on 18th October, 2006 this court passed an ad-interim order in terms of prayers (a) and (c), except the words bracketed in red with the direction to the court receiver to appoint defendant No.1 as his agent on usual terms and conditions except as to security.

4. Apparently, when the Court Receiver went to the suit flat for executing the said order of this court, the flat was locked and therefore, possession could not be taken. The plaintiff, which is a Housing Finance Company and has given a loan to the defendants, now seeks an order of this court to take forcible possession of the suit flat by breaking open the lock, if necessary, with the help of the local police.

5. Having regard to the circumstances of the case and looking to the conduct of the defendants except the defendant No.2, it is appropriate to allow this notice of motion in terms of prayer clause (a), which reads as follows :

> (a) that pending the final hearing and disposal of the Suit, this Hon'ble Court be pleased to modify its order dated 18th October, 2006, thereby allowing the Court Receiver, High Court, Mumbai to take physical possession and /or forcible physical possession by breaking open the lock and /or in possession of some third party/tenant/trespasser in the suit premises being Flat No.005, Ground Floor, Prabha Park, Building No.1, Wing E, Gut No.39(pt), B Cabin Road, Morivili Bombay-Pune Highway, Ambernath (East)-421 501, Tal. Ulhasnagar, Dist. Thane, with or without the help of local police personal/station in whose jurisdiction the suit premises is situated and make inventory of and attach all articles lying and being in the suit premises and take necessary steps required to protect the suit premises;

4. Order accordingly. Motion stands disposed of.

(S.A.BOBDE,J.)

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